

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	PS Docket No. 12-94
Transition Process for 700 MHz Public)	PS Docket No. 06-229
Safety Broadband Waiver Recipients)	

To: Chief, Public Safety and Homeland Security Bureau

COMMENTS OF THE OAC

The Operators Advisory Committee to the Public Safety Spectrum Trust (“OAC”) hereby files these comments in response to the Public Safety and Homeland Security Bureau’s (the “Bureau”) Request for Comment on the transition process for 700 MHz public safety broadband waiver recipients.¹

I. The Commission Should Extend the Existing Leases to Waiver Recipients as Part of the Transition of the Spectrum to FirstNet.

The membership of the OAC consists of 21 jurisdictions that have been granted waivers by the Commission to pursue early deployment of public safety broadband networks using the 10 MHz of public safety broadband spectrum previously allocated in the 700 MHz band.² Each of

¹ Public Notice, “Public Safety and Homeland Security Bureau Seeks Comment on transition Process for 700 MHz Public Safety Broadband Waiver Recipients,” DA 12-555 (rel. April 6, 2012).

² On May 13, 2010, the Commission granted conditional waivers to twenty-one public safety jurisdictions. *See* Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket 06-229, *Order*, 25 FCC Rcd 5145, 5147 ¶ 7 (2010) (*Waiver Order*). The Bureau granted a twenty-second waiver, in May 2011, to the State of Texas (Texas) and required Texas to adhere to the cumulative conditions imposed on the initial waiver recipients. *See* Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket 06-229, *Order*, 26 FCC Rcd 6783 (PSHSB 2011) (*Texas Waiver Order*). The membership of the OAC includes the following 21 waiver recipients: City of Boston; City and County of San Francisco, City of Oakland, City of San Jose, CA; State of

the 21 jurisdictions comprising the OAC has entered into a Commission-approved long-term *de facto* transfer lease with the Public Safety Spectrum Trust (“PSST”), the entity that holds the existing 10 MHz nationwide public safety broadband license, Call Sign WQHW226.³ These Leases allow the 21 waiver recipients to make use of the spectrum in their respective jurisdictions.

Pursuant to the Waivers and the Leases, the 21 early builder jurisdictions have made extensive investment in both time and capital since May 2010. Their work has proceeded in close cooperation with the Bureau and the PSST, as well as with NTIA, PSCR and OEC, with a view that these early builders are deploying portions of the national network, rather than standalone systems; accordingly, interoperability has been and continues to be a paramount concern for the 21 early builders. The 21 have made extensive progress in planning, system design, and consultation with vendors, working with the concerned federal partners and with each other to exchange information and learn from each other’s efforts. Seven of the

New Jersey; City of New York; City of San Antonio, TX, on behalf of the San Antonio Urban Area Security Initiative Region; City of Chesapeake, VA; State of New Mexico; City of Charlotte, NC; State of New York; District of Columbia; County of Maui, County of Hawai’i, County of Kaua’i, City and County of Honolulu, and the State of Hawai’i; City of Seattle, WA; Adams County, CO Communications Center; City of Pembroke Pines, FL; Los Angeles Regional Interoperable Communications System (LA-RICS); Iowa Statewide Interoperable Communications Systems Board; Calumet, Outagamie and Winnebago Counties, WI; Mississippi Wireless Communications Commission; City of Mesa, AZ and the TOPAZ Regional Wireless Cooperative; State of Oregon; State of Texas.

³ See Public Notice, “Public Safety and Homeland Security Bureau Approves Long Term De Facto Transfer Spectrum Lease Agreements Filed by Conditional Waiver Recipients to Establish 700 MHz Interoperable Public Safety Wireless Broadband Networks,” DA 10-1687 (rel. Sept. 2, 2010). The City and County of San Francisco, City of Oakland and City of San Jose, CA (“Cities”) currently have a Petition pending with the Commission seeking to waive the 60-day time limit for entering into a *de facto* transfer lease and expeditiously authorize a new *de facto* transfer spectrum lease between the PSST and the Cities to cure defects with the signature on the original lease.

jurisdictions⁴ have been awarded Broadband Technology Opportunity Program (BTOP) grants totaling \$380 million to support their deployments; others are self-funded or have pursued other grants; some are exploring creative public/private partnership opportunities; all have undertaken outreach to their user communities to assess needs and opportunities and to build support for the deployment.

Accordingly, the OAC and its 21 member jurisdictions have a very strong interest in the Bureau's Request for Comment and in the outcome of this proceeding. The OAC respectfully submits that in transitioning Call Sign WQHW226 to FirstNet, the FCC should continue the Waivers and extend the 21 leases (currently set to expire on September 2, 2012) for an additional two-year period, to allow the early builders' efforts to continue. It may well be two years or more before FirstNet is able to be established, complete system planning, undertake procurement, and begin deploying a network. In the meantime, as discussed more fully below, there is much to be learned and a great deal of benefit to be had from allowing these 21 early builders to continue their efforts. On the other hand, if the Waivers and Leases are not extended, the early deployments will come to an indefinite halt, the extensive efforts of the 21 early builders will be frustrated, funding may very well be lost, and potential users may become disillusioned. At a minimum, if the Commission chooses not to continue the Leases for a full two years, the Commission should still transition all of the Leases to FirstNet with an extension of the existing term to remain in effect until such time as FirstNet is up and running, has adopted technical and interoperability standards, and is in a position to make a decision on continuing the Leases.

⁴ City and County of San Francisco, City of Oakland, City of San Jose, CA; State of New Jersey; State of New Mexico; City of Charlotte, NC; Adams County, CO Communications Center; Los Angeles Regional Interoperable Communications System (LA-RICS); Mississippi Wireless Communications Commission.

In extending the Leases and transitioning them to FirstNet, the Commission should also make clear that the Leases include the additional 10 MHz of spectrum (the D Block spectrum) that Congress has allocated to the public safety national broadband network.⁵ The legislation reassigning the D Block to public safety envisions construction of a single network using the full 20 MHz of spectrum. Accordingly, the full 20 MHz of spectrum should be included under the leases.

In continuing to operate under the Leases, the early builders will continue to be subject to the existing interoperability and technical requirements established by the Commission, with the understanding that the lessees will abide by future requirements issued by the Commission and/or adopted by FirstNet. Additionally, these early builders should not be viewed as “opt-outs” or potential opt-outs from the future FirstNet network. Rather, they should continue to be viewed as Phase One test-bed deployments from which a great deal is yet to be learned that will assist FirstNet and public safety users with invaluable information as the national network is planned and deployed.⁶ The 21 early builders expect to work with FirstNet to ensure interoperability of these Phase One deployments and to integrate them into the national network. Accordingly, the Commission should recommend and/or require that the 21 early builders continue to function as an operator advisory committee, albeit to FirstNet,⁷ just as they have functioned as an operator advisory committee to the PSST.

⁵ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 §6101 (2012) (“Spectrum Act”).

⁶ See Waiver Order at ¶ 11 (“These early deployments may also assist the Commission in understanding what additional issues may arise for public safety in connection with the larger goal of establishing a nationwide interoperable broadband network and serve better to inform all parties as we proceed with the related rulemaking proceedings.”)

⁷ See Spectrum Act § 6205.

II. The Commission has Extensive Authority to Extend the 21 Leases in Transitioning the License to FirstNet.

The extension of the Waivers and Leases requested herein is fully consistent with the Spectrum Act, and in fact further promotes the intent of Congress in the deployment of a nationwide public safety broadband network by providing FirstNet with invaluable experience and information gained from the Waiver Recipients. Under the legislation establishing FirstNet, the Commission is required to “reallocate and grant a license to the First Responder Network Authority for use of the 700 M Hz D block spectrum and existing public safety broadband spectrum.”⁸ While the legislation makes clear that the Commission is required to “implement and enforce this title as if this title is part of the Communications Act,”⁹ the legislation is silent on what to do with the existing leases under the transition to FirstNet. This leaves it to the Commission, as the expert agency charged with implementing the Communications Act, to fill the “gap” by addressing all issues relating to the leases in effectuating the assignment of the license to FirstNet.¹⁰ As part of the Congressional scheme set forth in the new legislation, the Commission has full authority to extend and continue the leases with the early builder jurisdictions as part of the process of transitioning the public safety license to FirstNet.¹¹

Indeed, the legislation specifically requires the Commission to “take all actions necessary to facilitate the transition of the existing public safety broadband spectrum.”¹² The Commission

⁸ Spectrum Act §6201 (a).

⁹ Spectrum Act § 6003.

¹⁰ *Southern Company v. MCI* 293 F.3d 1338, (Eleventh Cir., 2002), at 1343; *Also see Chevron U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 842-45, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984).

¹¹ As the expert agency charged with interpreting the Communications Act the Commission is entitled to deference in making policy decisions in the course of implementing the Communications Act. *See Chevron, supra*.

¹² Spectrum Act §6201(c).

is further charged to “take any action necessary to assist the First Responder Network Authority in effectuating its duties and responsibilities.”¹³ Thus, it is clear that under the Congressional scheme the Commission is empowered to address the leases as part of the assignment of the license and the Commission must take such action.

In making its determination on whether and how to continue the Waivers and Leases as part of the transition process, the Commission’s decision should be taken in light of what best fulfills the public interest. For the reasons set forth in these comments, the public interest warrants a two year extension of the leases, with the addition of the D Block, as part of the license assignment. The OAC does not believe that issuance of special temporary authority (STA) would be a viable arrangement for Waiver Recipients as such authority would not address the operational needs of early builders and users of the early deployments, and would not provide sufficient certainty to governmental authorities, vendors and users who must make decisions on funding and committing to the deployments and fulfilling contractual obligations. Waiver Recipients plan to provide access to public safety agencies, and this will require a more definite arrangement than is afforded under an STA. Also, Waiver Recipients cannot formulate business plans if issued STAs as there would be instability in the reissuance of STAs every six months.

It is not realistic to expect the FirstNet Board to be in a position to adequately address the leases by September of this year when they will expire. Under these circumstances the Commission must act now to fulfill its mandate under the statute. Unless the Commission extends the leases as part of the FirstNet license assignment, the waiver recipients will be left in a state of uncertainty with no resulting public interest benefit. In a worst case scenario, the leases will expire in September 2012 defeating the test bed approach recognized by the

¹³ Spectrum Act §6213.

Commission to be in the public interest in approving the waivers. Accordingly, the Commission should extend the leases as part of the transition of the license to FirstNet.

III. Continuing the Leases Will Bring Benefits Vital to the Success of FirstNet.

It is critical to the success of FirstNet to continue support for the progress being made by the Waiver Recipients with the understanding that these 21 early builders are the initial phase of a nationwide effort. The Waiver Recipients have invested extensive time and resources in the planning and organization of early buildouts. These initiatives are beginning to yield benefits and results, providing a wealth of valuable information about best practices and lessons learned for broadband wireless deployments—information that will be critical to the success of FirstNet. Curtailing the work at this juncture will prematurely and unnecessarily end the ability to learn from these efforts, and will potentially frustrate, at least for a period of time, the progress that these early deployments represent towards achieving a successful nation public safety broadband network.

Accomplishments of the waiver recipients to date include:

- Development of regional and/or statewide plans and governance structures;
- Generating enthusiastic support with local, State and regional public safety agencies;
- Early planning of interoperability requirements that can be used as case studies for FirstNet;
- Experience in collaborating with industry and local jurisdictions in building LTE systems;
- Outreach efforts to first responders who will serve as the FirstNet user base;
- Experience navigating through political and legal issues in planning and implementing these networks;

- Obtaining significant funding commitments to help buildout respective portions of the national network;
- Chose a numbering administrator and helped develop a PLMN Id allocation system for current and future network usage.

Importantly, the Waiver Recipients represent a variety of regional, local and statewide deployments and include a diverse range of urban and rural jurisdictions that are evenly distributed both geographically and with respect to population density and terrain. FirstNet can learn a great deal about deployments and operations under differing circumstances, serving different types of needs. Unlike with commercial deployments, there is no one-size-fits-all solution that will define the user needs of the many different jurisdictions and public safety agencies throughout the nation, and accordingly having a variety of operational test bed deployments spanning and addressing a variety of circumstances and needs, is critical to gathering data that will help ensure the success of FirstNet as it plans and deploys a nationwide network.

Continuing the efforts by Waiver Recipients will help to lower the risks that FirstNet will face since FirstNet will be able to analyze the metrics derived from the early deployments and formulate a comprehensive business and project plan for the national network. For example, FirstNet will gain information on best practices for ensuring that service meets operational needs, including information regarding operational impacts, priorities and unique security requirements. The Waiver Recipients' efforts are fully consistent with FirstNet's goals in deploying an interoperable nationwide public safety broadband network (NPSBN) and they will work closely with FirstNet once established to ensure interoperability and integration of the early deployments with the future national network. The Waiver Recipients represent a series of success stories that

will help generate additional support for FirstNet while lowering FirstNet's risk associated with such a huge project.

As the builder and operator of the nationwide public safety network, FirstNet will benefit by leveraging the Waiver Recipients and their work to date as the first rollouts of the nationwide network. Transitioning the leases with the issuance of the license as requested herein would meet with the overarching policy of the Spectrum Act by retaining for FirstNet the ability gain the greatest benefit from the ongoing work of the Waiver Recipients. Accordingly, it would serve no valid purpose to permit any of the leases to expire against the will of the Lessee.

The OAC urges the FCC to continue the Waivers and keep in place the existing Leases for all 21 of the early builder jurisdictions so that they may continue to provide a foundation for the future success of FirstNet by becoming the first phase of the NPSBN. FirstNet will gain valuable insight to the issues that will arise in deploying the greater NPSBN, e.g., governance models, public-private partnerships, technology interoperability, device testing, adoption of applications and much more.

The OAC urges the Commission to take action on extending the Leases as soon as possible to afford certainty to the early builders in their interactions with user agencies, vendors and elected officials. At a minimum, however, the Commission should not allow the Leases to lapse for any period of time after September 2, 2012, as severe consequences to the waiver recipients could result. In this regard, the FCC should consider the irreparable harm it will cause to the seven BTOP grant recipients if it does not seamlessly transfer the leases to FirstNet. A material condition of the BTOP grant is that each grant recipient received a waiver authority from the FCC to use the 700 MHz public safety broadband spectrum. If the FCC does not transition these leases, the BTOP grant recipients are in jeopardy of losing their grant funding.

Accordingly, the Commission should renew the Leases for an additional two-year period and assign the Leases to FirstNet along with the transfer of the license from the PSST to FirstNet. Additionally, as noted above, the Commission should make clear that the Leases cover both the existing 10 MHz of spectrum licensed to the PSST under station WQHW226, as well as the additional 10 MHz of spectrum that Congress has allocated for the NPSBN.

CONCLUSION

Wherefore, the Commission should take action in accordance with the comments set forth above, to continue the Waivers and extend the 21 Leases as part of the transition of the spectrum to FirstNet. These comments were reviewed and approved by each of the 21 members of the OAC (the 21 Waiver recipients and Lease holders).

Respectfully submitted,

OPERATOR ADVISORY COMMITTEE

By:

A handwritten signature in black ink, appearing to read "William M. Schrier".

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